another to act for him in executing the principal's business, and that other has, without the knowledge of the vendor, also represented the purchaser in the transaction.

If an agent of a vendor is, unknown to that vendor, also agent for the purchaser, he may not collect a commission from the vendor. *Moore v. Kelley,* 162 S. W. (Tex.) 1034; *Walker v. Osgood,* 98 Mass. 348. In fact, it has been held that under these circumstances he can collect from neither. *Bell v. McConnell,* 37 Oh. St. 396; *Rice v. Wood,* 113 Mass. 133. Even though the party sought to be charged knew of the double agency, provided the other principal did not. *Chapman v. Currie,* 51 Mo. App. 40; *Neal v. Adkins,* 145 S. W. (Tex.) 264. *Contra, Jauman v. McCusick,* 166 Cal. 517. The fact that the sale was advantageous to the principal is immaterial. *Cannell v. Smith,* 142 Pa. St. 25. But he may act for both parties when they have so consented. *Jarvis v. Schaefer,* 105 N. Y. 289; *Barry v. Schmidt,* 57 Wis. 172. Also when he acts merely as middleman to bring the parties together, although neither of them knew of his agency for the other. *Ranney v. Donovan,* 78 Mich. 318; *Rupp v. Sampson,* 16 Gray (Mass.) 398. The reason advanced for the general doctrine that one agent may not act for two parties whose interests conflict is that the temptations to defraud are so great that it is contrary to public policy to allow it; the law will presume fraud. As to the principal case, if there is anything in the maxim that the acts of an agent are the acts of his principal (Story on Agency, ninth ed., 2), it seems clear that the broker, plaintiff, who has employed one who is also acting for the other side, has himself acted for both sides, and is therefore entitled to no commission, and the defendant should be allowed to take advantage of this in a suit for a commission.

CHATTEL MORTGAGES—INVALIDITY AS TO CREDITORS—POSSESSION BY MORTGAGOR.—BAILLARGEON V. DUMONLIN, 151 N. Y. SUPP. 112.—*Held,* that a chattel mortgage on a stock of merchandise remaining in the possession of the mortgagor, who continues in business, disposing of the stock and replacing stock and carrying on trade with knowledge of the mortgagee, is fraudulent as against creditors.

A mortgage void as to creditors and purchasers may be good as between the parties. *Bagley v. Harmon,* 91 Mo. App. 22. At common law, the delivery or change of possession, either actual or constructive, was essential to the validity of a chattel mortgage as against third persons. *Goodnow v. Dunn,* 21 Me. 86; *Russell v. Fillmore,* 15 Vt. 130. Practically all the states now permit the recording of chattel mortgages and in general consider it as the equivalent of change of possession of the property. *Berson v. Nunan,* 63 Cal. 550; *Holman v. Doran,* 56 Ind. 358. Although the mortgage is duly recorded, in a few jurisdictions a legal presumption of fraud arises from the continued possession of the property by the mortgagor. *Smith v. Acker,* 23 Wend. 653; *Severance v. Leavitt,* 16 Nebr. 439. With regard to the doctrine of the principal case, the states are about equally divided and those contra hold that the power given to a mortgagor in a mortgage of

a stock of goods to sell the goods in the regular course of trade, does not of itself avoid the mortgage. *Louden v. Vinton,* 108 Mich. 313; *Fletcher v. Powers,* 131 Mass. 333. Those cases in harmony with the principal case make a mortgage void as to creditors when the mortgagor remains in possession disposing of the mortgaged goods in the usual course of business without accounting in any manner to the mortgagee. *Gee v. Van Natta Lynds Drug Co.,* 105 Mo. App. 27; *Gillespie v. McClaskie,* 160 Ala. 289. And in the latter cases the recording of the mortgage cannot make it valid, for the recording of a mortgage is merely constructive notice of its terms and when the mortgage includes the right of disposition for the use and benefit of the mortgagor, it is deemed fraudulent in law. *Zartman v. First National Bank,* 189 N. Y. 267. But where a power of sale contained in a mortgage covers only a part of the property subject thereto, it is generally held that though mortgage is void in part, it is valid as to the property not included in the power of sale. *Cook v. Halsell,* 65 Tex. 1. It should be noted that the holding of the principal case does not apply when mortgage stipulates that the mortgagor is required to account to the mortgagee for the proceeds of the sale which proceeds are to be applied in payment of the debt. *Skilton v. Codington,* 185 N. Y. 80; *Dunham v. Stevens,* 160 Mo. 95; *Stevens v. Curran,* 28 Mont. 366.

CONTRACTS—CONSIDERATION—LEGAL DUTY TO THIRD PERSON.—POETKER v. LOWRY, 144 PAC. (CAL.) 981.—*Held,* that a promise to perform a preëxisting duty to a third person is no consideration for a second promise.

It is agreed that the performance of, or the promise to perform, an existing legal duty to the promisor is no consideration to support a promise. *Lingenfelder v. Brewing Co.,* 103 Mo. 578. The minority of cases which seem to override this rule, do so upon the theory of an abrogation in some manner of the previous contract. *Munroe v. Perkins,* 9 Pick. (Mass.) 298. Or upon the erroneous theory of a surrender by the promisee of the alleged alternative privilege of incurring damages rather than performing in specie. *Lattimore v. Harsen,* 14 Johns. (N. Y.) 330. The rule is generally stated as applying also to legal duties to persons other than the promisor. *Kenigsberger v. Wingate,* 31 Tex. 42; *Sherwin v. Brigham,* 39 Oh. St. 137; *Johnson v. Seller,* 33 Ala. 265. In the case of non-contractual duties, it has not been necessary so to decide, as the illegal character of the consideration would be an all-sufficient ground. Accordingly, in such cases, courts often proceed upon the illegality, rather than upon the absence, of consideration. *Voorhees v. Reed,* 17 Ill. App. 21; *Warner v. Grace,* 14 Minn. 487. And many of the decisions in apparent accord with the principal case might well have gone upon the ground of a preëxisting legal obligation to the promisor himself. *Arend v. Smith,* 151 N. Y. 502; *Drill Co. v. Ashhurst,* 148 Ill. 115. The majority doctrine has, of course, no application in the case of an absolute undertaking to perform what one was only conditionally obligated to a third person to do. *Green v. Kelly,* 64 Vt. 309. Several deviations from the prevalent